

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 CIAE-00 PM-03 H-02 INR-07 L-02 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 CU-02 AID-05 CPR-01

OPR-02 SY-05 USIE-00 INRE-00 NSCE-00 SSO-00 HEW-02

ACDA-05 OMB-01 IO-10 A-01 DPW-01 TRSE-00 OC-05 CCO-00

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O R 201900Z APR 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC IMMEDIATE 3032

INFO DIRNSA WASHDC

SECDEF WASHDC

JCS WASHDC

7TH RRFs UDORN

AMCONSUL UDORN

MACTHAI BANGKOK

CSAF/JA WASHDC

DAJA WASHDC

C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 6833

E.O. 11652: GDS

TAGS: MAR, TH

SUBJ: RAMASUN GATE INCIDENT

REF: A. BANGKOK 5752

B. BANGKOK 5945

C. BANGKOK 6778

D. BANGKOK 6796

SUMMARY: THE SUBJECT INCIDENT HAS BECOME A RALLYING POINT
FOR UPHOLDING THAI SOVEREIGNTY. TO CLOSE OUT THE CASE AND
ELIMINATE IT AS A PUBLIC ISSUE, A SETTLEMENT HAS BEEN
REACHED WITH THE PLAINTIFF AND PROCEDURES HAVE BEEN WORKED OUT
WITH THE JUDGE. HTE PLAINTIFF WILL DROPP HIS CHARGES. THE JUDGE
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WILL REQUIRE THE COURT APPEARANCE OF FOUR SERVICEMEN TO

DISMISS CASE. SUCH APPEARANCE WILL AVOID ASSERTION OF DIPLOMATIC IMMUNITY BUT WILL NOT NECESSARILY PREJUDICE THE INVOCATION OF DIPLOMATIC IMMUNITY IN FUTURE CASES INVOLVING RAMASUN PERSONNEL. FAILURE TO SETTLE THE CASE ON THESE TERMS WILL DAMAGE OVERRIDING INTERESTS. DEPT IS REQUESTED TO INTERCEDE WITH DA IN FAVOR OF PROPOSED SOLUTION.

1. THE RAMASUN GATE INCIDENT AND THE RELATED LAUCHAI CASE HAVE CONTINUED TO BALLOON AS A PUBLIC ISSUE IN THAILAND. LAST WEEK A DEMONSTRATION TOOK PLACE AT RAMASUN STATION. IT WAS FOLLOWED BY ONE AT THE CONSULATE. THEREAFTER, THE LOCUS AND THRUST OF PUBLIC INTEREST IN THE CASE SHIFTED TO THE NATIONAL SCENE. THE STUDENTS IN BANGKOK TOOK UP THE CRUSADE AND IN THE PAST WEEK HAVE STAGED FOUR DEMONSTRATIONS AT THE EMBASSY INCLUDING ONE TODAY, APRIL 20. THE NATIONAL PRESS IN REPORTING THE DEMONSTRATIONS HAS CONCENTRATED NOT ON THE OFFENSES TO LUACHAI BUT ON THE FAILURE OF THE USG TO RECOGNIZE THAI SOVEREIGNTY BY REFUSING TO ALLOW THE FOUR MILITARY POLICEMEN TO APPEAR BEFORE, AND BE SUBJECT TO, THE JURISDICTION OF THE THAI COURT.

2. THIS QUESTION OF SOVEREIGN RIGHTS WAS THE SUBJECT OF THE MAIN EDITORIAL IN THE MODERATE BANGKOK POST THIS WEEK. THE PAPER SUPPORTED THE DEMONSTRATORS' DEMANDS THAT THE US SERVICEMEN BE TRIED. THE PUBLICITY SURROUNDING THE ISSUE HAS REQUIRED BOTH THE PRIME MINISTER AND THE FOREIGN MINISTER TO RESPOND TO PRESS QUESTIONS ABOUT IT, AND THE FOREIGN MINISTER MUST ANSWER AN INTERPELLATION REGARDING THE CASE IN PARLIAMENT THIS COMING WEEK. THE GOVERNMENT'S REPLIES TO PRESS QUESTIONS CLEARLY SHOW AN ATTEMPT TO AVOID THE EXTREMELY SENSITIVE MATTER OF DIPLOMATIC IMMUNITY EMBODIED IN SECRET AGREEMENTS BETWEEN THAILAND AND THE US. THESE AGREEMENTS ARE A SOURCE OF EMBARRASSMENT TO THE GOVERNMENT, AS THEY RUN CONTRARY TO THE IMPETUS FOR DEMOCRATIC REFORM. CONSEQUENTLY, THE PUBLIC ACKNOWLEDGEMENT OF THESE AGREEMENTS WHICH WOULD BE NECESSARY TO VERIFY THE DIPLOMATIC IMMUNITY STATUS OF THE FOUR SERVICEMEN WOULD BE COUNTERPRODUCTIVE AND IS RULED OUT.

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3. NEGOTIATIONS WERE REINITIATED WITH LUACHAI LAST THURSDAY, 17 APRIL, WITH THE AIM OF HAVING HIM DROP THE CASE AS A FIRST STEP TOWARD DEFUSING THE SOVEREIGNTY ISSUE. THE NEGOTIATIONS WERE CONDUCTED IN THE PRESENCE OF THE VICE GOVERNOR OF UDORN. LATE FRIDAY AFTERNOON AN AGREEMENT WAS REACHED. LUACHAI WOULD RECEIVE 150,000 BAHT, ALL ALLEGATIONS AGAINST HIM WOULD BE WITHDRAWN, AND HE WOULD BE RIF'D RATHER THAN

TERMINATED FOR CAUSE. IN RETURN, LUACHAI AGREED TO PETITION THE COURT TO HAVE HIS CASE DROPPED, ADVISE THE POLICE OF HIS SETTLEMENT AND REQUEST THAT NO FURTHER ACTION BE TAKEN ON THE OFFICIAL INVESTIGATION AND PROSECUTION, NOT TAKE ANY LEGAL ACTION AGAINST ANY USG PERSONNEL ON ACCOUNT OF THIS MATTER, AND REFRAIN FROM AROUSING PUBLIC OPINION IN HIS BEHALF.

4. ON SATURDAY THE CHIEF JUDGE OF THE PROVINCIAL COURT WAS ADVISED OF THE SETTLEMENT AND INDICATED ACCEPTANCE OF IT IN PRINCIPLE. FURTHER CONVERSATIONS WITH HIM, HOWEVER, HAVE REVEALED THAT FOR HIM TO DISMISS THE CASE HE WILL REQUIRE THE FOUR MILITARY POLICEMEN TO APPEAR IN COURT. THIS IS NECESSARY BECAUSE THE QUESTION OF THE SERVICEMEN'S DIPLOMATIC IMMUNITY HAS BECOME A NATIONAL ISSUE AND MUST ALSO BE DISPOSED OF. TO DO SO, THE JUDGE NEEDS THE FOUR MEN BEFORE HIM TO QUESTION THEM ON THE RECORD IMMEDIATELY SUBSEQUENT TO THE RECEIPT OF LUACHAI'S PETITION, WHEREUPON HE WILL DISMISS THE CASE. THIS WILL QUELL INFLAMED THAI PUBLIC FEELINGS OF OFFENDED SOVEREIGNTY. THE QUESTIONS AND ANSWERS BETWEEN THE JUDGE AND THE FOUR US SERVICEMEN WILL BE: (1) Q: HOW DO YOU PLEAD? A: NOT GUILTY; (2) Q: DO YOU HAVE DIPLOMATIC IMMUNITY? A: I DON'T KNOW; (3) Q: DO YOU CLAIM DIPLOMATIC IMMUNITY? A: NO. AT THE CONCLUSION OF THAT DIALOGUE, THE JUDGE WILL DISMISS THE CHARGES. THE PRESS WILL BE ON HAND TO RECORD FOR THE PUBLIC THE FACT THAT THAI SOVEREIGNTY HAS HAD ITS DAY IN COURT.

5. THE FOREGOING APPEARANCE IS NECESSARY UNDER THAI LAW SINCE A SPECIAL APPEARANCE TO CONTEST JURISDICTION ALONE IS NOT RECOGNIZED. FURTHERMORE, THE JUDGE FOR PERSONAL PRAGMATIC REASONS CAN SEE NO OTHER WAY OUT OF THIS CASE
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WHICH HAS INCITED SO MUCH PUBLIC CRITICISM. ADDITIONALLY, SEVERAL NATIONAL THAI OFFICIALS HAVE ALREADY PUBLICLY ANNOUNCED THAT THE QUESTION OF THE MILITARY POLICEMEN'S IMMUNITY IS ONE FOR THE COURT AND ONLY THE COURT TO DECIDE. SIDE-STEPPING THE ISSUE AT THIS TIME WOULD TEND TO INFLAME RATHER THAN DEFUSE THE ALREADY VOLATILE CLIMATE.

6. TECHNICALLY THE INDIVIDUAL SERVICEMEN DO NOT HAVE THE AUTHORITY TO WAIVE THEIR OWN IMMUNITY, AND THEREFORE THEIR PUBLIC REFUSAL TO CLAIM IT WILL NOT AMOUNT TO A WAIVER. THUS, THEIR FAILURE TO ASSERT THEIR IMMUNITY WILL NOT DEBAR THE US FROM ASSERTING IT IN FUTURE CASES. THE MOST PROBABLE INFERENCE THE PUBLIC WILL DRAW FROM THE SCENARIO IS THAT THEY DO NOT ENJOY SUCH STATUS. IN ANY EVENT, THAT PROBLEM IS LESS SEVERE THAN THE CLIMATE THAT HAS BEEN CREATED AND MAINTAINED BY THE CONTINUATION OF THIS MATTER. THE LONGER IT

REMAINS OPEN, THE GREATER THE JEOPARDY TO OUR OVERALL INTERESTS HERE.

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ACTION EA-10

INFO OCT-01 ISO-00 CIAE-00 PM-03 H-02 INR-07 L-02 NSC-05

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ACDA-05 OMB-01 IO-10 A-01 DPW-01 TRSE-00 OC-05 CCO-00

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C O N F I D E N T I A L SECTION 2 OF 2 BANGKOK 6833

7. AT FIRST OUR CONCERN WITH THIS INCIDENT CENTERED ON THE ATTENTION IT MIGHT FOCUS ON RAMASUN STATION AND OTHER INSTALLATIONS ENGAGED IN INTELLIGENCE WORK. WE FEARED THAT OUR SPECIAL AGREEMENTS WOULD BE PUBLICIZED, THAT THE THAI, BECAUSE OF SUCH PUBLICITY, WOULD FEEL THE NEED TO ABROGATE OR AT LEAST REVISE THEM AND THAT THE PUBLIC WOULD INTEREST THEMSELVES IN THE NATURE OF RAMASUN AT A PARTICULARLY VULNERABLE TIME. SUBSEQUENTLY, IT HAS BECOME CLEAR THAT THIS CASE HAS A GRAVE POTENTIAL IMPACT ON OUR OTHER RELATIONSHIPS WITH THE THAI, AND ON OUR MILITARY PRESENCE HERE AS A WHOLE.

8. THE FACT THAT THE LUACHAI CASE CRYSTALIZES THE SOVEREIGNTY
ISSUE MAKES IT PARTICULARLY AWKWARD IN THE CONTEXT OF OUR
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DISCUSSIONS REGARDING FUTURE FORCE LEVELS. AS LONG AS THIS MATTER
REMAINS BEFORE THE PUBLIC, IT PREJUDICES THE FORTHCOMING
NEGOTIATIONS ON THE US PRESENCE HERE. IT ALSO INTERFERES
WITH SUCCESSFUL NEGOTIATION OF OTHER KEY QUESTIONS,
SUCH AS EVACUEES FROM INDO-CHINA. IN SHORT, WE ARE AT
THIS POINT, REQUIRED TO CUT OUR LOSSES SO THAT WE CAN GET
TO THE OTHER BUSINESS AT HAND.

9. IN ORDER TO PERMIT THE FOUR SERVICEMEN TO APPEAR IN COURT,
MACTHAI BELIEVES IT MUST RECEIVE PERMISSION FROM THE DEPARTMENT
OF THE ARMY, SINCE THE CASE
COULD BE REGARDED AS AN OFFICIAL DUTY
CASE IN WHICH THE USG HAS THE PRIMARY RIGHT OF JURISDICTION.
WE DO NOT BELIEVE THAT THIS IS A REAL ISSUE, SINCE WITHOUT A
SOFA THE USG HAS NO PRIMARY JURISDICTION EXCEPT THAT WHICH WE
ARE ABLE TO OBTAIN INFORMALLY BEFORE CASES REACH THE
COURTROOM.

10. MACTHAI HAS CABLED DAJ-IA REQUESTING PERMISSION TO
PERMIT THE COURT APPEARANCE, BUT HAS YET TO RECEIVE A
REPLY. SINCE THE COURT APPEARANCE IS TENTATIVELY SCHEDULED
FOR 1330 HRS LOCAL, 21 APRIL (0230 HRS E.D.T., 21 APRIL) AN
AFFIRMATIVE REPLY TO THAT REQUEST IS NEEDED SOONEST. WE
NEED TO HAVE THE FOUR SERVICEMEN PRODUCED IN COURT TO
PARTICIPATE IN THE DIALOGUE AS INDICATED.

11. WE RECOGNIZE THAT THE SCENARIO CONSTITUTES
DEFACTO ACCEPTANCE OF THE COURT'S JURISDICTION AND THUS
CAN BE CONTRUED AS CONSTITUTING A WAIVER OF
DIPLOMATIC IMMUNITY OF THE MILITARY PERSONNEL INVOLVED,
BUT THE BASIS OF THIS IMMUNITY IS LEGA
LY SHAKY HERE, AND
TO INSIST UPON ASSERTING IT IN THIS CASE, BASED ON SECRET
AGREEMENTS, WOULD PROBABLY GIVE IT THE COUP DE GRACE. THE
RTG HAS ALREADY TOLD US THAT ONCE THIS CASE IS SETTLED,
IT WISHES TO OPEN WITH US A DIALOGUE ON THE WHOLE SUBJECT
OF DIPLOMATIC IMMUNITY FOR MILITARY PERSONNEL. WE CANNOT
FORSEE WHAT THE OUTCOME OF THAT DIALOGUE WILL BE, BUT IT
IS CLEAR THAT IT WILL BE MORE UNSATISFACTORY TO US IF IT
TAKES PLACE IN AN ATMOSPHERE OF RANCOR OF THE KIND THIS
CASE IS GENERATING.
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12. IT HAS TO BE UNDERSTOOD THAT THIS ISSUE IS NO LONGER
A LEGAL ONE, BUT HAS BECOME OVERRIDINGLY POLITICAL. IT IS
HARRASSING THE RTG TO THE POINT WHERE, ABSENT A SOLUTION
SATISFACTORY TO THE PUBLIC, THE RTG WILL FIND IT ALL THE MORE
DIFFICULT TO COOPERATE WITH US IN ANY RESPECT. THE QUESTION
OF THE RELEVANCE OF OUR FORCES HERE TO THAI INTERESTS WILL
BE EVER MORE SHARPLY AND EMOTIONALLY POSED. WE MUST
THEREFORE CUT OUR LOSSES AND ACCEPT THE ADMITTEDLY IMPERFECT
SOLUTION PROPOSED.

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